

1 David R. Shane, Esq. [SBN: 109890]  
 2 Robert J. Taitz, Esq. [SBN: 168334]  
**SHANE & TAITZ**  
 3 1000 Drakes Landing Road, Suite 200  
 Greenbrae, California 94904-3027  
 Telephone: 415/464-2020  
 Facsimile: 415/464-2024

5 Attorneys for Plaintiff and Counter-Defendant  
 6 COMMONWEALTH ANNUITY AND LIFE INSURANCE  
 COMPANY f/k/a ALLMERICA FINANCIAL LIFE INSURANCE  
 AND ANNUITY CO.,

10  
 11 COMMONWEALTH ANNUITY AND  
 LIFE INSURANCE COMPANY f/k/a  
 12 ALLMERICA FINANCIAL LIFE  
 INSURANCE AND ANNUITY CO.,

13 Plaintiff,

14 vs.

15 JOHN DALESSIO; RITA DALESSIO; and  
 16 the DALESSIO FAMILY 2003 TRUST,

17 Defendants.

Case No. CV 08 1739 EDL

**JOINT RULE 26(F) REPORT**

Date : July 1, 2008  
 Time : 9:00 a.m.  
 Courtroom : 790

18 JOHN DALESSIO; RITA DALESSIO and the  
 19 DALESSIO FAMILY (2003) TRUST,

20 Counter-Claimants,

vs.

21 COMMONWEALTH ANNUITY AND LIFE  
 INSURANCE COMPANY f/k/a ALLMERICA  
 22 FINANCIAL LIFE INSURANCE AND ANNUITY  
 COMPANY, a Delaware corporation; DAVID  
 23 SHANE, an individual; VAUGHN R. WALKER,  
 an individual; ANN SPARKMAN, an individual;  
 and DOES 1 through 20,

24 Counter-Defendants.

1 Plaintiff and Counter Defendant COMMONWEALTH ANNUITY AND LIFE  
2 INSURANCE COMPANY f/k/a ALLMERICA FINANCIAL LIFE INSURANCE AND ANNUITY  
3 CO. ("Allmerica") for itself alone hereby submit this Rule 26(f) Report as follows:

4 A. F.R.C.P. Rule 26(f)(1)

5 Despite numerous calls to Mr. Dalessio Allmerica has not been able to contact  
6 Mr. Dalessio to discuss any aspect of this matter. Allmerica has received neither disclosures  
7 nor documents from him.

8 Allmerica is making its initial disclosures of witnesses and documents  
9 concurrent with this report.

10 B. F.R.C.P. Rule 26(f)(2)

11 Allmerica intends to take the deposition of Dalessio to ascertain the substance  
12 of any allegations. Allmerica will then move for summary judgment to force payment of the  
13 settlement agreement and to dismiss the counter claim.

14 Allmerica does not know what discovery Dalessio intends to do.

15 Allmerica suggest a discovery cut off date of February 28, 2009. and does not  
16 believe that discovery phases are necessary.

17 C. F.R.C.P. Rule 26(f)(3)

18 None.

19 D. F.R.C.P. Rule 26(f)(4)

20 None.

21 E. Proposed Dates

22 The parties propose the following dates:

23 Discovery Cut-Off February 28, 2009

24 Motion Cut-Off March 28, 2009

25 Pre-Trial Conference May 2009

26 Trial Date June 2009

27 F. Discovery Matters

28 Allmerica does not believe that discovery phases are necessary.

## G. Trial Estimate

Allmerica estimates a three (3) day trial.

#### **H. Settlement Efforts To Date**

There have been no settlement discussions to date. Allmerica has been unable to communicate with Dalessio.

## I. Complex Cases

Allmerica does not believe that this is a complex case.

**J. Additional Parties**

Dalessio has not served the other cross defendants except for Allmerica.

## K. Dispositive Motions

Allmerica intends to file a motion for summary judgment based on the terms of the settlement. Allmerica also intends to file a motion for summary judgment based on res judicata and collateral estoppel.

## L. Unusual Legal Issues

Allmerica does not believe that this case presents any unusual legal issues.

M. Severance, Bifurcation and Order of Proof

Allmerica does not believe that this case requires severance, bifurcation or other ordering of proof.

DATED: June 25, 2008

SHANE & TAITZ

By: /s/ David R. Shane  
David R. Shane  
Attorneys for Plaintiff/Counter-  
Defendant COMMONWEALTH  
ANNUITY AND LIFE INSURANCE  
COMPANY f/k/a ALLAMERICA  
FINANCIAL LIFE INSURANCE  
AND ANNUITY CO.

**PROOF OF SERVICE BY MAIL****Commonwealth Annuity, etc. vs. Dalessio, et al.**

I declare that I am employed in the County of Marin, State of California. I am over eighteen years and not a party to the within cause; my business address is Shane & Taitz, 1000 Drakes Landing Road, Suite 200, 2<sup>nd</sup> Floor, Greenbrae, California 94904-3027.

On June 25, 2008, I served upon the interested party/parties hereto the within document, described as:

**JOINT RULE 26(F) REPORT  
[Unilateral]**

by enclosing said document in a sealed envelope at Greenbrae, California. I am readily familiar with the firm's practice of collection and processing of items for mailing. Under that practice, each item is deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Greenbrae, California, during the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation/meter date is more than one day after date of deposit for mailing in affidavit. The item mailed is addressed, as follows:

**Refer to Attached Service List**

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

This declaration was executed on June 25<sup>th</sup>, 2008 at Greenbrae, California.

/s/      Molly B. Libbey  
Molly B. Libbey

## SERVICE LIST

### Commonwealth Annuity, etc. vs. Dalessio, et al.

#### Defendants and Counter-Claimants

JOHN DALESSIO  
16 Via Las Encinas  
Carmel Valley, California 93924-9449

RITA DALESSIO  
16 Via Las Encinas  
Carmel Valley, California 93924-9449

DALESSIO FAMILY [2003] TRUST  
16 Via Las Encinas  
Carmel Valley, California 93924-9449